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those creations of lofty purpose built within the realm of the intellect, defying the vicissitudes of time and the onslaughts of the elements.

NOTE TO THE MACLEOD CASE ¹

[Printed in Judicial Decisions, this JOURNAL, p. 158]

As to third parties, or as to individual rights, the title to the Island of Cebu did not vest in the United States until the exchange of ratifications by the signatory parties April 11, 1899. *Haver v. Yaker*, 9 Wall., 32; *Dooley v. United States*, 182 U. S., 222-230. It follows that all rights to do business in the port of Cebu remained intact until its occupancy and possession by the United States, February 22, 1899, which rights necessarily included the right to import and sell rice, for rice is not contraband of war, it being classed as food or provision. *Wheaton's Int. Law* (3rd ed.), pp. 640-642, 654; 7 *Moore's Dig. Int. Law*, pp. 675-692; *Hall's Int. Law* (4th ed.), pp. 687, 689.

The Court of Claims found in the principal case (45 C. Cls., 339) that the Spanish flag was hauled down and the Spanish forces, civil and military, evacuated the Island of Cebu December 25, 1898, and two days later the so-called republic, of which Aguinaldo was the head, took possession of the island and proceeded to administer its public affairs, maintain a government at Cebu, and collect customs until the 22nd of February following, when possession was surrendered to the United States. At no time prior to February 22, had an officer of the United States, either civil or military, or any armed force of the United States been in the Island of Cebu, nor had the United States been in possession or occupation of the port of Cebu or any part of the island. (*Ibid.*, 344.)

In that condition of things, the payment of duties to the *de facto* government then in possession of the port of Cebu was lawful and within the doctrine that has been applied and enforced more than once by the United States in its dealings with other nations. The executive order of July 12, 1898, contained an expression of principle universally recognized in international law. "Rights which are founded upon mere force reach their natural limit at the point where the force ceases to be efficient." *Hall's Int. Law* (5th ed.), p. 448. The executive order did not extend to or apply to ports or places not actually occupied or possessed by the United States. The principal case puts this proposition beyond

¹ Prepared by Mr. L. T. Michener, of the Washington Bar, of counsel in the case.

question. To make assurance doubly sure, the Secretary of War, in promulgating that executive order, made this one: "Upon the occupation of any ports or places in the Philippine Islands by the forces of the United States, the foregoing order shall be proclaimed and enforced." (45 C. Cls., 343.) The act of the Secretary was the act of the President. Evidently, it was the purpose of the President to have the order promulgated and enforced in the ports and places in the Philippines when and as occupied or possessed by the forces of the United States. The language is not susceptible of any other construction. That course was not only the usual one in emergencies of the kind the world over, but it was the reasonable course when we consider that our government was engaged in taking possession of ports and places in a distant part of the world, inhabited by a strange mixture of people, many of them owing fealty to other nations. To such people public proclamation would be of great force and effect, and it was apparent, therefore, that it should be made before obedience ought to be required.

A parallel in principle is found in a "notified blockade," which is a notification accompanied by the fact of blockade. Wharton's Int. Law (3rd ed.), secs. 511, 519; Hall's Int. Law (4th ed.), secs. 257, 258.

This now well established doctrine of occupation and possession was clearly recognized and enforced during our Civil War as occasion offered. The Act of July 13, 1861 (12 Stat. 255, sec. 5), authorized the President to declare the inhabitants of a State, or any section or part thereof, where the insurrection existed, to be in a state of insurrection against the United States, and thereupon all commercial intercourse by and with its citizens should cease and be unlawful so long as hostilities existed. President Lincoln, August 16, 1862 (12 Stat. 1262), issued a proclamation on the subject, but excepted therefrom the inhabitants of such States "as may maintain a legal adhesion to the Union and to the Constitution, or may be from time to time occupied and controlled by forces of the United States engaged in the dispersion of the said insurgents." The statute and the excepting clause of the proclamation were considered by the Supreme Court in *The Venice*, 2 Wall., 259, 265, 270, and the court said that "Military occupation and control, to work this exception, must be actual; that is to say, not illusory, not imperfect, not transient; but substantial, complete, and permanent." That case was approved in *The Reform*, 3 Wall., 617, 632; *The Grape-shot*, 9 Wall., 129, 131; *Levy v. Stewart*, 11 Wall., 244, 253.

The Ratification Act of June 30, 1906, should not be so construed as

to violate the law of nations, if any other possible construction remains. International law is a part of our law, and must be ascertained and administered by the courts of justice as often as questions of right depending upon it are duly presented for their determination. *Hilton v. Guyot*, 159 U. S., 113, 163; *The Paquete Habana*, 175 U. S., 677, 700. "It has also been observed," said Mr. Chief Justice Marshall, in *Murray v. Schooner Charming Betsy*, 2 Cranch, 64, 118, "that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and, consequently, can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country. These principles are believed to be correct and they ought to be kept in view in construing the act now under consideration."

When the Ratification Act was passed, Congress could not have been disregarding of the Hague Convention. The language of Mr. Justice Harlan in *Chew Heong v. United States*, 112 U. S., 536, 590, seems to be particularly applicable. "When the Act of 1882 was passed," said that learned justice, "Congress was aware of the obligation this government had recently assumed, by solemn treaty, to accord to a certain class of Chinese laborers the privilege of going from and coming to this country at their pleasure. Did it intend, within less than a year after the ratification of the treaty, and without so declaring in unmistakable terms, to withdraw that privilege by the general words of the first and second sections of that act? Did it intend to do what would be inconsistent with the inviolable fidelity with which, according to the established rules of international law, the stipulations of treaties should be observed? These questions must receive a negative answer." This utterance of that great judge and patriot are commended to those of our citizens whose interests impel them to endeavor to avoid or evade the treaty obligations of their government.

ANOTHER SANCTION FOR INTERNATIONAL OBLIGATIONS

Under the title of "Higher Nationality: A study in law and ethics," Viscount Haldane, Lord Chancellor of Great Britain, delivered a notable address before the American Bar Association at Montreal on September 1, 1913. The public remarks of a Lord Chancellor of Great Britain are always, on account of the important office he holds, entitled to more than passing notice. But the Lord Chancellor is ordinarily